

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION
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INDIANAPOLIS, 46204

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VIA FEDERAL EXPRESS

William F. Canton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: In the Matter of Federal-State Joint Board on Universal
Service, CC Docket No. 96-45

Dear Secretary Canton:

Enclosed are an original and six copies of the reply comments of the Staff of the Indiana Utility Regulatory Commission in response to the Notice of Proposed Rulemaking in the above-captioned docket. Copies of the reply comments have also been mailed to the Service List and the International Transcription Service as directed in the Notice.

Also, please find enclosed an additional copy and self-addressed return envelope, to be date-stamped received and returned.

If you have any questions, please call me at 317-232-2737.

Sincerely,

for *Sandy Abough*
Robert C. Glazier
Director of Utilities

Enclosures

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IN THE MATTER OF
FEDERAL-STATE JOINT BOARD
ON UNIVERSAL SERVICE
CC DOCKET NO. 96-45

Indiana Utility Regulatory Commission
Indiana Government Center South
302 West Washington, Suite E306
Indianapolis, Indiana 46204

Resectfully Submitted:

for *Sandy Abough*
Robert C. Glazier
Director of Utilities

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In The Matter of)
) FCC 96-93
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)

REPLY COMMENTS OF THE
STAFF OF THE INDIANA UTILITY REGULATORY COMMISSION

I. SUMMARY

The Staff of the Indiana Utility Regulatory Commission ("IURC Staff") hereby submits its reply comments in response to the Federal Communications Commission (FCC) Notice of Proposed Rulemaking (Notice) issued on March 8, 1996.¹ The IURC Staff generally concurs in the Joint Reply Comments filed by the states of Idaho, Maine, Montana, Nebraska, New Hampshire, New Mexico, Oklahoma, Utah, Vermont, West Virginia, and Wyoming,² except as noted in those Joint Reply Comments, and submits these Supplemental Reply Comments regarding certain issues pertaining to the interstate Subscriber Line Charge (SLC) and Carrier Common Line Charge (CCLC).

¹ In re the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, Adopted March 8, 1996.

² This list of States filing Joint Reply Comments was complete and accurate as of early afternoon, Monday, May 6, 1996; it is possible that changes may have been made to this list at the last minute.

The Subscriber Line Charge should not be increased, given the questions regarding both the legality and the level of support of such an action.

The FCC has asked for comment on whether it should "eliminate or reduce the subscriber loop portion of the interstate CCL charge and, instead, permit LECs to recover these costs from end users."³ IURC Staff strongly opposes any increase in the interstate Subscriber Line Charge (SLC). IURC Staff concurs in the initial Joint State Comments⁴ regarding the relevance of *Smith v. Illinois Bell Telephone Co.*⁵ and the U.S. Supreme Court's rejection in that case of "board-to-board" ratemaking in favor of "end-to-end" ratemaking.⁶

It is important to note that there are actually two separate issues involved here: (1) the elimination of - or reduction in - the interstate CCLC and (2) the increase of the interstate EUC/SLC. Eliminating or reducing the interstate CCLC does not presuppose or require increasing the interstate EUC/SLC.

Southwestern Bell Telephone Company argues that "[e]liminating the interstate CCL and shifting recovery to end-users will lead to substantial economic gains for consumers as access price reductions generate toll reductions . . . The public record strongly supports

³ Notice of Proposed Rulemaking, FCC 96-93, CC 96-45, Para. 114, at 52.

⁴ Joint State Comments, CC 96-45, at 16-17 (Filed April 12, 1996) [States of Maine, Montana, Nebraska, New Hampshire, New Mexico, Utah, Vermont, and West Virginia].

⁵ 282 U.S. 133 (1930).

⁶ 282 U.S. 133, 151 (1930).

this type of rate rebalancing."⁷ It is equally correct to argue that the public record strongly opposes eliminating the interstate CCLC and shifting recovery to end users, as shown by the number and diversity of (opposing) commenters.

The original comments from state commissions were fairly consistent in their opposition to increasing the SLC. The National Association of State Utility Consumer Advocates (NASUCA) also argued against the proposal to raise the interstate EUC/SLC. The telephone industry was divided on this matter. In its initial comments, Puerto Rico Telephone Co. argued that increasing the SLC could have adverse universal service implications and would result in customers dropping off the network.⁸ The larger LECs, who might all be expected to support an increase, were not unanimous in that position, either. NYNEX and Bell Atlantic opposed increasing the SLC.⁹ Even the interexchange carriers were split on this issue. MCI pointed out in its comments, at page 14, that there may be no economic justification for increasing the SLC. Such diversity of opinion and, in fact, significant opposition from all major commenting sectors, indicates, at a minimum, that increasing the

⁷ Comments of Southwestern Bell Tel. Co., n. 11 at 5 (Filed April 12, 1996), In re Federal-State Joint Board on Universal Service, FCC 96-63, CC Docket No. 96-45 (Notice of Proposed Rulemaking; hereinafter, "USF Notice") (Adopted March 8, 1996), citing Comments of AT&T, at 12, In re: End User Common Line Charges, CC Docket 95-72; In re: Rochester Tel. Corp. Petition for Waivers to Implement its Open Market Plan, CC Docket 95-96 (Released March 7, 1995) (Order), at 5.

⁸ Comments of Puerto Rico Telephone Co., at 4.

⁹ Comments of NYNEX, at 4-5.

SLC is not required by the Act and may well be unwise and inappropriate. A more detailed discussion of several of these comments follows.

The Comments of the National Association of Regulatory Utility Commissioners (NARUC) included a fairly comprehensive review of NARUC's historical opposition to the interstate SLC.¹⁰ Individual State Public Utility Commissions also voiced their concerns and/or opposition to increasing the interstate SLC. For example, the New York Department of Public Service

does not believe an increase in the SLC is appropriate at this time. On the contrary, increasing the SLC would be counter to the first universal service principle in the 1996 Act that quality services be available at 'just, reasonable, and affordable rates' [§ 254(b)(1)]. Moreover, it would send the message to the American public that telephone competition and deregulation will lead to higher local rates.¹¹

IURC Staff shares these concerns and believes that the Federal Communications Commission needs to move very cautiously in this area - and only after allowing the State Commissions a substantial, meaningful, and ongoing opportunity to provide information and guidance to the FCC regarding the likely impact on local telephone rates in their respective states.

The Missouri Public Service Commission ("MoPSC") focused its opposition on the timing of the FCC's CCLC/SLC proposal:

[T]he 1996 Act establishes deadlines regarding some matters[;] it also provides that the FCC may initiate whatever additional proceedings are necessary to facilitate implementation. Therefore, the MoPSC requests

¹⁰ Comments of NARUC, CC 96-45, at 16 - 20.

¹¹ Comments of New York Dept. of Public Svc., CC 96-45, at 4.

that the FCC defer consideration of issues which the 1996 Act does not require the FCC to address immediately to a time when the parties will have ample time and opportunity to review and address those issues. For example, issues such as a modification of the subscriber line charge ("SLC") and the carrier common line charge ("CCL") should be reserved for a further notice of proposed rulemaking.

Comments of MoPSC, CC 96-45 (Filed April 12, 1996), at 2.

IURC Staff strongly supports MoPSC and urges the FCC to delay consideration of any restructuring of the interstate CCLC and/or EUC/SLC to a later date when all parties - including the Federal Communications FCC and its Staff - will have sufficient time and resources to devote to these extremely important and highly controversial issues.

The National Association of State Utility Consumer Advocates (NASUCA) argues that the proposal to eliminate or reducing the interstate CCLC

and permitting the LECs to recover these costs from end users . . . is founded on the incorrect assumption that the loop is a direct cost of local service Continuing to charge interexchange carriers for their use of the loop does not run counter to the notion that subsidies must be explicit By assuming that the loop is a direct cost of local service, the [FCC] would significantly overstate the cost of basic local service Any benefit these customers might see from competition would be eliminated by a rate increase in the form of an increased end user charge.

Comments of NASUCA, CC 96-45, at 23 - 24 (Filed April 12, 1996).

Bell Atlantic argues that the interstate SLC and CCL charges are cost recovery mechanisms.¹²

Contrary to the [FCC's] assumption, interstate CCL charges are not implicit subsidies, and therefore, need not be made explicit under the 1996 Act. Instead, federal CCL charges recover the portion of interstate non-traffic ("NTS") loop costs that are not recovered through SLC charges. The interstate NTS cost[s] are real, defined costs based upon the [FCC's] determination

¹² Comments of Bell Atlantic (Filed April 12, 1996), In re: Federal-State Joint Board on Universal Service, at 10.

that a certain portion of the total NTS costs should be borne by the interstate jurisdiction. Although the interstate costs allocated to a particular common line may not always exactly match the relative interstate/intrastate use of that facility, that fact does not make the interstate CCL charge a subsidy. The rate paid by a subscriber to any generally-tariffed service does not cover the exact cost of the particular facility serving that customer. Rates for many services, including CCL, are of necessity based upon averages, but that fact does not mean that the rates for all services contain subsidies.

Comments of Bell Atlantic, *supra* n. 11, at 11.¹³

IURC Staff supports Bell Atlantic's argument that "interexchange carriers should be required to flow through any CCL reductions to their MTS customers dollar-for-dollar."¹⁴ We would extend this requirement to all providers of interstate MTS services, including (where applicable) incumbent LECs. Similarly, it is not enough to pass through reductions in access charges to optional calling plan customers and high-volume MTS customers; the dollar-for-dollar pass-through for all interstate MTS providers should be extended to

¹³ Note: the use of this quotation from Bell Atlantic's comments does not signify endorsement or support of any of Bell Atlantic's other statements or positions regarding the recovery of non-traffic sensitive costs or other CCL or SLC issues, unless such support is specifically stated. For example, the IURC Staff rejects Bell Atlantic's implied position that LECs should be allowed to increase the monthly interstate SLC rate by up to twenty-five cents each year, plus an inflation adjustment [Bell Atlantic, at 12]. Likewise, IURC Staff rejects Bell Atlantic's implied position that the interstate CCL charge should recover only the "residual" interstate NTS costs that are left over after the recovery of certain interstate NTS costs from basic local rates and from the interstate SLC/EUC. IURC Staff is not necessarily opposed to changing the interstate CCL charge from a usage-sensitive cost recovery mechanism to a flat rate charge; however, the IURC Staff reserves judgment, depending upon the details of any such proposals which may ultimately be advanced by any entity.

¹⁴ Bell Atlantic, at 12.

all MTS customers, including both low-volume and low-income MTS customers. In this regard, Note: Southwestern Bell's assumption that access price reductions will automatically lead to toll reductions is contrary to the experiences of some State Utility Commissions. In Indiana, for example, AT&T and Sprint both raised their prices for certain intrastate MTS calls, despite several significant access charge reductions by Ameritech Indiana, GTE, Contel, and United.¹⁵

NYNEX also disagrees with the proposition that the Act requires the FCC to make the interstate CCLC an explicit charge - i.e., that the Act requires the FCC to recover from a federal Universal Service Fund those non-traffic sensitive costs that are now being recovered through the interstate CCLC:

The Telecommunications Act of 1996 does not require the Commission to replace any, or all, of the contributions to joint and common costs in the interstate access charge system with universal service funding. Implicit support mechanisms must be made explicit, and must be incorporated into the new Section 254 universal service fund, only if they are necessary to support universal service as defined in the Act. Contributions that do not directly support universal service should be dealt with through pricing flexibility and access charge reform [emphasis added]. The conference report makes it clear that Section 254(e), which requires universal service support to be explicit, and to be available only to eligible carriers, "should not be construed to prohibit any telecommunications carrier from using any particular method to establish rates or charges for its services to other telecommunications carriers, to the extent such rates or charges are otherwise permissible under the Communications Act or other law" [S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 131 [(1996)]]]. Thus, a rate

¹⁵ Indiana Utility Regulatory Commission, Report to the Regulatory Flexibility Committee of the Indiana General Assembly, at 45 & Appendix C (June 30, 1995).

structure for interstate access charges may provide substantial contribution to the recovery of joint and common costs if such contribution is not used to support universal service.

Comments of NYNEX, CC 96-45 (Filed April 12, 1996), at 4-5.

Even if it is determined that it is appropriate to eliminate or decrease the interstate CCLC, that does not presuppose or require the recovery of any resulting revenue decrease through an increase in the interstate EUC/SLC. As the National Association of Regulatory Utility Commissioners (NARUC) observes,

If the Joint Board finds that it is not economically efficient to recover non-traffic sensitive NTS costs on a traffic sensitive basis via CCL, it still is not necessary to increase the SLC. From an economic perspective, what is important is the flat structure of the charge; not who pays it. Interexchange carriers should pay a portion of the NTS loop cost because they use the LECs loop to provide their services.

For example, instead of raising the SLC, the Joint Board could recommend the following:

- 1 - All interstate NTS costs be identified and reduced to a per line charge.
- 2 - The charge be assessed to the end-user's presubscribed IXC.
- 3 - If the end-user occasionally uses other carriers, a per line charge could be divided among all carriers using the common line on the basis of relative use by each carrier.
- 4 - IXCs would be free to recover the flat charge payment any way the market will allow, e.g., a minimum bill, tapered usage rates, etc., as long as the charges to the end-user come from the IXC and not the LEC.

Comments of NARUC, CC 96-45 (Filed April 12, 1996), at 20.

IURC Staff will reserve judgment on any pricing flexibility or access reform proposals which the FCC or any other party or entity may ultimately propose. Similarly, and in general, while the IURC Staff does not support increasing the interstate EUC/SLC, this

should not be interpreted as blanket opposition to decreasing or modifying the interstate CCL charge. However, as we noted in our initial Comments in this Docket, several steps must be taken, at a minimum, prior to such a decrease or modification: (1) ascertaining the existence of "subsidies" within local rates, (2) calculating the cost of providing local telephone service, and (3) calculating the cost of providing other LEC services that utilize the local loop, the LEC switch (both local and tandem), and/or local transport facilities.¹⁶

In closing, IURC Staff again urges the FCC to delay consideration of any proposals to restructure the interstate CCLC and/or the interstate EUC/SLC until such time as the FCC, its Staff, and all other interested parties have more of an opportunity to deliberate and to respond to any proposals which may ultimately be offered. The burden of proof should be on those who wish to deviate from the *status quo*; any proposals (including proposed FCC rules) should be specific and backed by detailed empirical data.

¹⁶ IURC Staff Comments, CC 96-45 (Filed April 12, 1996), at 6, 7 & n. 10, 8.